DATO' DR JOSEPH ERAVELLY

v.

DATO' HILMI MOHD NOR & ORS

HIGH COURT MALAYA, KUALA LUMPUR
VT SINGHAM J
[CIVIL SUIT NO: S22-1306-2006]
1 DECEMBER 2010

ADMINISTRATIVE LAW: *Exercise of judicial functions - Bias - Test of real danger of bias - Objection to mediating judge sitting as trial judge - Practice Direction No. 5 of 2010 - No danger of bias - Application for recusal allowed to preserve integrity and reputation of judge*

CIVIL PROCEDURE: *Judge - Application to recuse judge - Real danger of bias test - Objection to mediating judge sitting as trial judge - Practice Direction No. 5 of 2010 - No danger of bias - Application for recusal allowed to preserve integrity and reputation of judge*

The defendants applied pursuant to Practice Direction No. 5 of 2010 ('the said Practice Direction') for the judge to recuse himself from hearing and deciding the proceedings in this action, including the trial, since the judge was the mediating judge. The plaintiff objected to the said application. Learned counsel for the plaintiff referred to the case of *Dato' Tan Eng Cho v. Tan Kim Hor* and submitted that the defendants had failed to satisfy the test that there was a 'real danger of bias' on the part of the judge.

Held (allowing the defendants' application):

(1) Insofar as the said Practice Direction that the judge hearing the case should not be the mediating judge unless agreed to by the parties, it would depend on the extent of the role or participation of the judge during the mediation proceedings. The said Practice Direction is not an automatic disqualification of the judge who was the mediating judge or *per se* even if there was non-compliance of the conditions stated therein. (para 5)

(2) The applicant who applies for the trial judge to recuse himself or herself from hearing and deciding the case must satisfy the court that 'there is a real danger of bias' on the part of the judge if he or she were to proceed to hear the case. Each case has to be decided on its own set of facts and circumstances and there cannot be a blanket disqualification. (para 6)

(3) On the facts and surrounding circumstances of the case, there was no basis that there could be any element of 'real danger of biasness' on the part of the judge to hear the case. However, the defendants perceived that the judge may not be impartial and this doubt could still be lingering in the defendants' mind. That perception was not good for the integrity of the court. Therefore, the judge was agreeable to recuse himself from hearing this case in order to preserve the integrity and reputation of the judge. (para 14)

Case(s) referred to:

Aird & Anor v. Prime Meridian Ltd [2006] EWCA 1866 ***(refd)***

Alor Janggus Soon Seng Trading Sdn Bhd & Ors v. Sey Hoe Sdn Bhd & Ors [2002] 4 CLJ 268 CA ***(refd)***

Clenae case [1999] VSCA 35 ***(refd)***

Dato' Tan Eng Cho v. Tan Kim Hor [2006] 2 MLJ 203 ***(refd)***

Dato' Tan Heng Chew v. Tan Kim Hor & Another Appeal [2006] 1 CLJ 577 FC ***(refd)***

In re JRL, Ex parte CJL [1986] 161 CLR 342 ***(refd)***

Locabail (UK) Ltd v. Bayfield Properties Ltd & Anor [2000] 1 All ER 65 ***(refd)***

LN v. SM [2007] AJ No. 888 ***(refd)***

Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd [2002] 1 CLJ 645 FC ***(refd)***

Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan [1999] 3 CLJ 65 FC ***(refd)***

Mohamed Exam Mohd Nor & Ors v. Ketua Polis Negara [2001] 4 CLJ 701 FC ***(refd)***

Ooi Bee Tat v. Tan Ah Chim & Son Sdn Bhd & Anor & Another Appeal [1995] 4 CLJ 484 CA ***(refd)***

R v. Gough [1993] AC 346 ***(refd)***

Re Ebner [1999] 161 ALR 557 ***(refd)***

Rowstead Systems Sdn Bhd v. Bumicrystal Technology (M) Sdn Bhd [2005] 2 CLJ 465 CA ***(refd)***

The Duke Group Ltd (In Liq) v. Alamain Investment Ltd & Ors [2003] SASC 272 ***(refd)***

Yeo Yoo Teik v. Jemaah Pengadilan Sewa, Pulau Pinang & Anor [1996] 2 CLJ 628 CA ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 34

For the applicants/defendants - K Siva Kumar (Christopher Mar with him); M/s Skrine
For the respondent/plaintiff - Dato' Bastian Vendargon (T Gunaseelan with him); M/s Gunaseelan & Assoc

Reported by Amutha Suppayah

JUDGMENT

VT Singham J:

[1] By saman dalam kamar dated 4 November 2010 (encl. 61), the defendants have applied that I recuse myself from hearing and deciding all the proceedings in this action including the trial of this action as I was the mediating judge and I should not hear the case pursuant to the Practice Direction No. 5 of 2010. Saman dalam kamar (encl. 61) is supported by the affidavit of the first defendant which was affirmed on 4 November 2010 on his behalf and on behalf of the second, third, fourth and fifth defendants (encl. 62). The plaintiff has replied to the said application and the affidavit in support by an affidavit in reply affirmed on 22 November 2010 (encl. 66) and has objected to the said application. There is also an additional affidavit in support affirmed by the third defendant on 23 November 2010 on her behalf and on behalf of the first, second, fourth and fifth defendants (encl. 67). The first defendant has replied by an affidavit in reply affirmed on 30 November 2010 on his behalf and on behalf of the second, third, fourth and fifth defendants (encl. 73) to the plaintiff's affidavit (encl. 66). There is also further affidavit affirmed on 30 November 2010 by Mar Sze Vei, co-counsel for the defendants (encl. 74).

[2] Learned counsel for the defendants had referred to the following cases in support of his submissions:

(1) Practice Direction No. 5 of 2010.

(2) *R v. Gough* [1993] AC 346

(3) *Mohamed Exam Mohd Nor & Ors v. Ketua Polis Negara* [2001] 4 CLJ 701

(4) *Dato' Tan Heng Chew v. Tan Kim Hor & Another Appeal* [2006] 1 CLJ 577

(5) Overcoming Case Backlogs, The Malaysian Experience

(6) *Megat Najmuddin Dato' Seri Dr Megat Khas v. Bank Bumiputra Malaysia Bhd* [2002] 1 CLJ 645

(7) *Yeo Yoo Teik v. Jemaah Pengadilan Sewa, Pulau Pinang & Anor* [1996] 2 CLJ 628

(8) *The Duke Group Ltd (In Liq) v. Alamain Investment Ltd & Ors* [2003] SASC 272

(9) *L.N. v. S.M.* [2007] A.J No. 888

(10) *Aird & Anor v. Prime Meridian Ltd* [2006] EWCA 1866

(11) *Rowstead Systems Sdn Bhd v. Bumicrystal Technology (M) Sdn Bhd* [2005] 2 CLJ 465

[3] Learned counsel for the plaintiff had referred to the case of *Dato' Tan Eng Cho v. Tan Kim Hor* [2006] 2 MLJ 203 and had submitted that the defendants have failed to satisfy the test that there was a 'real danger of bias' on my part.

Decision

[4] Upon considering the application (encl. 61) and the said affidavits, having heard the submissions of both parties and having considered the authorities relied on by the parties and the research conducted by this court, the decision of this court is:

[5] First, this court wishes to observe that insofar as The Practice Direction No. 5 of 2010 issued by the Chief Registrar of the Federal Court of Malaysia on the direction of the Chief Justice of Malaysia that the judge hearing the case should not be the mediating judge unless agreed to by the parties, it would depend on the extent of the role or participation of the judge during the mediation proceedings. The Practice Direction No. 5 of 2010 should not be considered or accepted as an automatic disqualification of the judge who was the mediating judge or *per se* even if there was non-compliance of the conditions stated therein. Nevertheless, of course, once Practice Directions have been properly and legally issued, they must of course be complied with.

(See *Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd* [2002] 1 CLJ 645 at p. 661). (See also *Ooi Bee Tat v. Tan Ah Chim & Son Sdn Bhd & Anor & Another Appeal* [1995] 4 CLJ 484 at p 488, *Yeo Yoo Teik v. Jemaah Pengadilan Sewa, Pulau Pinang & Anor* [1996] 2 CLJ 628 at p. 630). On the other hand, what is puzzling this court is that, a judge particularly myself, who had conducted several case management under O. 34 of the Rules of the High Court 1980 in detail as to the facts, documents, proposed agreed facts and issues to be tried, was never asked or has any application been made to recuse myself from hearing the case. In some cases, I had even assisted the parties to identify the issues relevant to the case to be tried. In some cases at the request of the parties, I have also indicated certain terms for the parties to negotiate an amicable settlement and depending on the facts and circumstances, could that arguably be construed that I had conducted mediation during the course of the case management. In any event, there has been no objection raised for me to recuse myself from hearing the case when negotiations had failed. In fact, the trials had proceeded and decisions have been given by this court. However, it would appear that the label 'mediation' used in the Practice Direction No. 5 of 2010 seems to have raised an issue for the mediation judge not to hear the case and some concern to some litigants and their counsel and that there ought to have been an agreement by the parties for the trial judge to be the mediating judge so that if the mediation fails, the trial judge can proceed to hear the case.

[6] In any event, the applicant who applies for the trial judge to recuse himself or herself from hearing and deciding the case must satisfy the court that 'there is a real danger of bias' on the part of the judge if he or she were to proceed to hear the case. Each case has to be decided on its own set of facts and circumstances and there cannot be a blanket disqualification. (See *Dato' Tan Heng Chew v. Tan Kim Ho & Another Appeal* [2006] 1 CLJ 577, *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 CLJ 65 at p. 64-65, *Mohamed Ezam bin Mohd Nor & Ors v. Ketua Polis Negara* [2001] 4 CLJ 701, *R v. Goh* [1993] AC 646). (See also *Alor Janggus Soon Seng Trading Sdn Bhd & Ors v. Sey Hoe Sdn Bhd & Ors* [2002] 4 CLJ 268 where the observation of Lord Bingham CJ in *Locabail*'s case at para. 25 (at p. 276) was considered in that case, where it is stated:

> In most cases, we think, the answer one way or to other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case. The greater that passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be.

In *Locabail (U.K) Ltd v. Bayfield Properties Ltd & Anor* [2000] 1 All ER 65 at p 76, [2000] QB 451 Lord Bingham CJ delivering the judgment of the Court of Appeal referred to three categories of cases giving rise to recusal applications and how they should be dealt with by the judge concerned and this was considered in the *Alor Janggus Soon Seng Trading Sdn Bhd & Ors v. Sey Hoe Sdn Bhd & Ors* [2002] 4 CLJ 268 at 274. He said:

> In any case giving rise to automatic disqualification on the authority of *Dimes v. Proprietors of Grand Function Canal* [1852] 3 HL Cas 759, 10 ER 301) and *R v. Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No. 2)* ([1999] 1 All ER 577, [1999] 2 WLR 272, HL), the judge should recuse himself from the case before any objection is raised. The same course should be followed if, for solid reasons, the judge feels personally embarrassed in hearing the case. In either event it is highly desirable, if extra cost, delay and inconvenience are to be avoided, that the judge should stand down at the earliest possible stage, not waiting until the eve or the day of the hearing. Parties should not be confronted with a last minute choice between adjournment and waiver of an otherwise valid objection. If, in any case not giving rise to automatic disqualification and not causing personal embarrassment to the judge, he or she is or becomes aware of any matter which could arguably be said to give rise to a real danger of bias, it is generally desirable that disclosure should be made to the parties in advance of the hearing. If objection is then made, it will be the duty of the judge to consider the objection and exercise his judgment upon it. He would be as wrong to yield to a tenuous or frivolous objection as he would to ignore an objection of substance.

In *R v. Gough* [1993] AC 646 at p 670, [1993] All ER 724 Lord Goff of Chieveley made four points concerning that test namely:

(a) it applies to all cases of apparent bias;

(b) it calls for an ascertainment of the relevant circumstances of the case;

(c) the 'court' there personifies the reasonable man; and

(d) the expression 'real danger' is preferred to 'real likelihood' to ensure that the court is thinking in terms of possibility rather than probability of bias.

[7] In the present case, the mediation proceedings on 8 October 2010 was conducted pursuant to the agreement of all parties as per exh. IN1, attached to the Affidavit Sokongan Tambahan (encl. 67). There was no notes recorded by the judge and all parties including counsel were directed not to record any notes of the discussion between the plaintiff and the first defendant during the mediation. In any trial or judicial proceedings, what is important is, whether there is a 'real danger of bias' if the judge who had conducted the mediation, of course subject to the extent of his or her participation were to hear the case, when the mediation had failed. However, the contention of learned counsel for the defendants is that, there is the 'real danger of bias' on the part of the judge who had conducted the mediation if he were to hear the case and that is not permitted under the Practice Direction No. 5 of 2010. As stated above, it all depends on the extent of the participation of the judge and what had truly transpired at the mediation and that itself should not disqualify the judge as of right as there can be abuses by some litigants or their advisers of the disqualification.

In *In re J.R.L., Ex parte C.J.L.* [1986] 161 CLR 342 Mason J sitting in the High Court of Australia said at p. 352:

> Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour.

In *re Ebner* [1999] 161 ALR 557, the Federal Court asked at 568, para. 37:

> Why is it to be assumed that the confidence of fair-minded people in the administration of justice would be shaken by the existence of a direct pecuniary interest of no tangible value, but not by the waste of resources and the delays brought about by setting aside the judgment on the ground that the judge is disqualified for having such an interest.

In the *Clenae case* [1999] VSCA 35 Callaway JA observed, at para. 89(e):

> As a general rule, it is the duty of a judicial officer to hear and determine the cases allocated to him or her by his or her head of jurisdiction. Subject to certain limited exceptions, a judge or magistrate should not accede to an unfounded disqualification application.

In *Locabail (U.K) Ltd v. Bayfield Properties Ltd & Anor* [2000] 1 All ER 65 at p 76, [2000] QB 451, the Court of Appeal said:

> It would be dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided. We cannot, however, conceive of circumstances in which an objection could be soundly based on the religion, ethnic or national origin, gender, age, class, means or sexual orientation of the judge. Nor, at any rate ordinarily, could an objection be soundly based on the judge's social or educational or service or employment background or history, nor that of any member of the judge's family; or previous political associations; or membership of social or sporting or charitable bodies; or Masonic associations; or previous judicial decisions; or extra-curricular utterances.
>
> By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particular if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind.

> The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be.

The Rt. Honourable Lord Hailsham of ST. Marylebone on The Independence of the Judiciary in a Democratic Society at the Riddle lecture 1978 at the New Hall, Lincoln's Inn, London on 24 May 1978 in his paper delivered and reported in [1978] 2 MLJ CXV said:

> To begin with, in all contested litigation one party at least has got to lose. If a man wins his case it is natural that he should put down his success to the justice of his cause, and perhaps to his own transcendent performance as a witness. But, if he loses, the last person he will blame is himself. He will condemn first the incompetence or weakness of his own advisers and advocate, and the stupidity, or worse, of the judge, and finally the obliquity and cunning of the opposing advocate or solicitor, all of them members, it must be said, of the legal profession. So it is our fault if anything goes wrong. But, if all goes right it is nothing to our advantage.
>
> Judges are there to settle disputes as and when they have arisen, to settle disputes in criminal and civil matters. They cannot settle them without bias unless their position is absolutely secure.
>
> It is trite law that no one can be judge in his own cause, that is to say in a case in which he is directly or indirectly interested.
>
> Judges do not select the cases which come before them for decision, and when they do come before him the judge cannot duck the issue. He can neither pigeonhole the dispute as others are sometimes thought to do, nor pass the poisoned chalice to another. In litigation, the buck stops at the judicial bench. The judge must dispose of the case on one way or another, and, in a politically sensitive case, either way he will give rise to controversy, and if he declines jurisdiction or withholds the relief asked for he will equally give rise to controversy.

The Rt. Honourable Lord Elwyn-Jones in his paper delivered speech on the Independence of the Judiciary at the Fourth Commonwealth Magistrates' Conference 1975 reported in [1976] 1 MLJ (viii), said:

> First, as to its significance for the Judges themselves. I expect that many of us will have taken some form of oath or affirmation upon taking office as Judge or Magistrate. The oath which a Judge in England and Wales swears before me is that he "will do right to all manner of people after the laws and usages of this Realm without fear or favour, affection or ill-will". But one Judge in a moment of nervousness swore that he would do right without fear or favour, affection or goodwill. The Lord Chancellor made him take the oath again correctly. I apprehend that in substance the judicial oaths, affirmations or undertakings in many other countries are similar to ours. These few words of the oath I have quoted incapsulate the whole duty of a Judge. To be faithful to them is the test of his integrity as a Judge. Implicit in this is that he must resist outside pressures and of course corruption. Independence is, in other words, a vital part of his judicial integrity.
>
> But most crucial is the watchful presence of independent and fearless Judges able and willing to do justice between citizen and State according to the law and vigilant to ensure that the State and its officers do not exceed their legal powers.
>
> Judges, like other servants of the Crown, should take adequate account of public opinion; but they must not be ruled by it. This means that there is bound to be criticism from time to time of the decisions of the Judges. In a free society that is not only inevitable, but it is no bad thing either. There used to be inhibitions about criticising Courts and Judges, but it is now nearly 40 years since Lord Atkin in a famous speech, known to all Judges, said:
>
> > No wrong is committed by any member of the public who exercises the ordinary right of criticising, in good faith, in private or public, the public act done in the seat of justice.
>
> Many factors influence the standing and authority of Judges within our community. Authority generally is under widespread challenge and question. For us, the Judges, the answer is clear: **be just and fear not.** (emphasis added).

[8] As for the grounds raised in paras. 6 and 7 of the Affidavit Sokongan Tambahan (encl. 67) affirmed on 23 November 2010 by the third defendant, this court is of the considered view that it is based on a flimsy ground for me to recuse myself and that ground cannot by any stretch of the imagination trigger or attract any 'real danger of bias' on my part. For the sake of completion, it is important to reproduce the said paragraphs:

> 6. The plaintiff, the defendants and our respective counsels were led by the court interpreter to the mediation room located in the Kuala Lumpur High Court building. The defendants were informed by the court interpreter that only the first defendant was required to go in for the mediation before the learned mediating judge. The second, fourth, fifth defendants and I were asked to wait outside the mediation room.
>
> 7. Throughout the mediation, the second, fourth, fifth defendants and I waited outside the mediation room and were not privy to what transpired during the mediation, **which may affect our rights** as the defendants in this case. In the case of the fourth defendant, the fifth defendant and myself, our rights as registered proprietors of the land which is the subject matter of this suit could be affected by the mediation. We do not have personal knowledge as to what transpired during the mediation. (emphasis added).

[9] This court is of the considered view that that objection is based on a flimsy ground and has no basis to this recuse application first, the third, fourth and fifth defendants could not have been prejudiced or there is any breach of the rules of natural justice as they were not parties to the transaction between the plaintiff and the first defendant and/or the second defendant as early as in the years 1989, 1990, 1993 and 1994. Secondly, at the material time the third, fourth and fifth defendants were minors and were ages only 16 years, 15 years and 12 years respectively in the year 1989, 17 years, 16 years and 13 years respectively in the year 1990, 20 years, 19 years and 16 years respectively in the year 1993 and 21 years, 20 years and 17 years respectively in the year 1994 (see para. 47 of the statement of claim at p. 18 of the bundle of pleadings) (encl. 30) which states they were born in the years 1973, 1974 and 1977 respectively. Thirdly, there is no allegation of fraud or any other allegation made against them in the statement of claim as similar to that as

pleaded against the first defendant (see paras. 46, 47, 48, 49, 50 and 51 of the statement of claim, bundle of pleadings (encl. 30). Furthermore encl. 67 is affirmed by the third defendant on her behalf and on behalf of the first, second, fourth and fifth defendants. Fourthly, there is no material produced to state that if they were present during the mediation, they would have in anyway contributed towards the discussion at the mediation, fifthly, it would appear that they were named as nominal defendants as they were at the time of filing the action the registered owners of the said properties. Sixth, they were represented by their counsel during the mediation and seventh, the supporting affidavit (encl. 62) was affirmed by the first defendant on his behalf and on behalf of the second, third, fourth and fifth defendants. The first and second defendants are husband and wife and the third, fourth and fifth defendants are the children of the first and second defendants. Therefore, there was no question of their rights being affected or any prejudice having been caused to them. Accordingly, that ground as raised in paras. 6 and 7 of the third defendant's affidavit that their rights were affected or they were prejudiced that is, even if they were prejudice, has no relevance or basis to attract the 'real danger of bias'. In the circumstances, this court finds that that ground as raised in paras. 6 and 7 of the third defendant's affidavit (encl. 67) is misplaced and cannot be sustained.

[10] However, there is another important matter and that is, the litigants must have the confidence and trust in the impartiality of the presiding judge. If the application to recuse the judge is dismissed and the judge insist to proceed to hear the case despite a genuine objection by the applicant for the judge who had conducted the mediation to recuse and there is no bad faith on the part of the applicant and depending on the facts and circumstances of the particular case, then it is for the judge himself or herself to decide whether or not he or she should still proceed to hear the case on the ground that there is a 'real danger of bias'. All this will depend on the facts and surrounding circumstances of the case and what had really transpired during the mediation and the ground that the judge who had conducted the mediation should not hear the case should not be applied as an automatic disqualification or *per se* even if that was envisaged by the Practice Direction No. 5 of 2010. Annexure A of the said Practice Direction states:

> Unless agreed to by the parties, the judge hearing the case should not be the mediating judge. He should pass the case to another judge. If the mediation fails then it will revert to the original judge to hear and complete the case.

[11] In any event, in those situation or circumstances, it cannot be doubted that there could be a strong possibility of lingering doubts in the mind of the applicant that the judge who had conducted the mediation and heard the discussion between the parties may not be impartial. If that is the case, it is not really good for the integrity of the judge himself or herself and this sacred Institution for the judge to proceed to hear the case. Further, there is also a possibility, in the event, that the judge may in certain circumstances be constrained or may even abstain from making any observation, or interject or rule against the applicant or his witnesses in the conduct of the witnesses when answering questions put to them or whenever irrelevant questions are put to the witnesses or inadmissible evidence are produced or if there is any contravention of the Evidence Act 1950 and this can arguably amount to 'real danger of biasness' in favour of the defendants/applicants and injustice to the respondent/plaintiff. The judge cannot also be seen as a mere recording machine just to please the dissatisfied litigant whose application for the judge to recuse was dismissed.

[12] This court wishes to emphasize that the phrase "justice should not only be done but manifestly and undoubtedly be seen to be done" should not only be applied vigorously but must also be seen to be applied firmly and the same should be the decisive reflection in all decisions arrived at by this court as it is an essential part of the justice system. It cannot be just taken as merely to provide lip service or applied in a mechanical fashion or as a mere presumption. The integrity of this well-grafted phrase has to be maintained sacred and it must remain always sacred.

[13] Be that as it may, however, this court wishes to abundantly make it clear that at no time in the past, presently, or in the future, was there or there will be any element of biasness operating in my mind or any compromise under any circumstances insofar as impartiality is concerned. Nevertheless, even if I were to experience any discomfort or prejudice or possibility of prejudice operating in my mind for any particular reason which may possibly

relate to any 'real danger of biasness', I have in the past on my volition recused myself and I will still continue to do so if the need arises in the future and in the interests of justice if there are reasonable grounds raised on the part of the litigant or his or her counsel for apprehending of that 'real danger of biasness' that the judge for whatever reason may not be impartial. The seat which I am occupying is to ensure that justice is seen to be done in the context of the administration of justice and not to seek for popularity either within the institution or outside the corridors of the court or to please or quieten the public gallery so that the independence of the judge's decision will at all times be maintained.

[14] On the facts and surrounding circumstances in the present case, and having gone through the issues raised in the affidavits and the submissions of both parties, I am of the considered view that there is no basis that there could be any element of 'real danger of biasness' on my part if I were to hear this case. On the other hand, I will not rule out that there could still be the perception of the litigant, in the present case, the defendants, that I may not be impartial and this doubt may still be lingering in the defendants' mind and that perception surely is not good for the integrity of this sacred seat that I occupy. Therefore, I must confess that as a result, I am agreeable to recuse myself from hearing this case in order to preserve the integrity and reputation of the judge, and that it will not be doubted under any circumstances. I must say that I am not and will not agree to recuse myself from hearing a case under any threat, fear or pressure imposed upon me but I must confess and wish to reiterate that I have come to this decision in order to maintain the integrity of this sacred seat that I occupy.

[15] In accordance with the rules of reason and justice, the application by the defendants is allowed namely, prayer (a) that I 'recuse from hearing and deciding all the proceedings including the trial of this action' and prayer (c) that the costs of and occasioned by this application be costs in the cause.